NOTES ON RECENT LEADING ARTICLES IN LEGAL PERIODICALS.

AMERICAN LAW REVIEW.—March-April.

The Electoral Commission of 1877. (Concluded.) Hon. John Goode. In this concluding portion of his paper Mr. Goode gives a detailed account of the more important acts of the commission. He shows the inconsistencies in the rulings of the commission, decided as they were by a strict party vote, and the disappointment of those who had hoped that the questions would receive a fair hearing. The author gives to his account of the proceedings a vitality that could only be imparted by one who had passed through that period of passionate feeling, not as a spectator, but as a participant.

Japanese Law and Jurisprudence. A. H. Marsh. In the legal, as in the other relations of life, Japan has put on the mask of progress. She has chosen the civil law of the continental nations as a model, and her code follows theirs. But this article shows us how the surface appearance of progress is belied by the underlying facts. Judges are appointed directly from graduates of schools and colleges, their appointment being based on examination. Lawyers are not usually consulted in regard to a case to come before the courts, or at least not until all the preliminaries are arranged; there is no system of pleading, and the law is administered according to the letter rather than to the "true intent and spirit," the latter fault not being, perhaps, peculiar to Japan. The picture here given is drawn by a Canadian, but the facts are furnished by a Japanese, whose lectures are reviewed by the paper. Allowing as much as possible for the Canadian point of view, the paper shows the inevitable result of the adoption by a nation of a code of law towards which it has not grown or shown any inclination to grow, and which has been given it by decree. Mr. Marsh describes the result as "disorganization striving with chaos in topsyturvydom." Looking behind the mask of borrowed manners, this is what the life of Japan seems to-day, for the evil is not confined to the law alone, it is in and through all the national life, for a nation, like an individual, must be itself, not a mere mimic, in order to be of value to itself or to society.

Is Congress a Conservator of the Public Morals? William A. Sutherland. Taking as a text the decision in the case of *Champion* v. *Ames* (188 U. S. 321), called in the report the "Lottery Case," which decides that lottery tickets are articles of interstate commerce, and that Congress may regulate their transportation, the writer dissents from the opinion there given. The lottery ticket is compared to an insurance policy, the argument seeming to fall back upon the old theory that an insurance policy is in reality a gambling contract. The court is laid under suspicion of deciding the question along the lines of "expediency." The question as to whether Congress has the power to "prohibit" under the power given it to "regulate," and the further question of this power to prohibit the transportation of lottery tickets, are ably argued. An impression is given that the author thinks the Supreme Court does not approve of lottery tickets, therefore the decision; and that the author does not approve of the attitude of the Supreme Court in allowing itself to be influenced by moral considerations, but no such statement is directly made.

CENTRAL LAW JOURNAL.—March 18.

Limitations of the Rule Requiring Travellers and others to Stop, Look, and Listen before Attempting to Cross Railroad Tracks, as Sought to be Applied to Urban Street Railways. Blackburn Esterline. The familiar "Stop, look, and listen" rule, which prevails nearly everywhere in the United States with more or less rigidity of application, is here considered in a new light. The very apparent difference between the two systems of transportation are first set forth; then the fact that the status of the relations between the travellers and the roads as to the duty to avoid collisions is necessarily quite different. Pennsylvania is noted as one of the states where the "Stop, look, and listen" rule has been applied to street railways, and Chief Justice Paxson is said to have "boasted of the stringency of the rules at railroad crossings." The rule as applied in this state is considered "unquestionably harsh," is not approved by the Federal Courts, and the "Strictness with which the rule is enforced at steam railroad crossings is also condemned." Louisiana and Missouri, however, have substantially the same rule in regard to street railways, and in a number of other states the rule has been sustained, including the state of New York, though in this latter state there is some conflict of decisions.

The author very reasonably deplores the extension of this rule to a situation so clearly different from that for which it was originally framed, and where it can but work great injustice to the multitude who frequent the city streets, where such care as can be demanded at any ordinary railroad crossing is impossible. The economic argument of Mr. Labatt in his recent work on "Master and Servant" seems to be applicable here. If street-car companies are to be exempt from damage for injuries caused by them, by reason of such a rule, the interests of the general public will be greatly injured through the many maimed and incapacitated persons who will become dependent upon the community. The question of contributory negligence should, as our author claims, be left for the decision of a jury in all such cases.

March 26.

Is the Initiative and Referendum repugnant to the Constitution of the United States? Willis L. Hand. In view of the fact that the author is probably correct in his opinion that the initiative and referendum will be tried before many years in some of the states most given to experiments in government, this question is one of great importance. The opponents of these measures contend that they are destructive of the republican form of government guaranteed by the constitution and therefore unconstitutional. This contention is here combated with much vigor. It is made plain that the people do not yield up any of their powers or privileges through this system, but rather do they acquire new and valuable powers. The closing paragraphs of the article deal with the initiative and referendum as they are seen in operation in Switzerland.

COLUMBIA LAW REVIEW.—March.

State Police Powers and Federal Property. Guarantees. Charles C. Marshall. This paper is distinctly a contribution to the literature which has grown up around the Northern Securities Case, for that case doubtless was the reason for the paper. An analysis of the paper would hardly do it justice unless it were very thoroughly done, but it would seem that anyone interested in the subject could not fail to be repaid by a perusal of the paper.

The Expansion of the Common Law. Sir Frederick Pollock. IV. The Law of Reason. It is good to hear from Mr. Pollock that we owe

our law of nature and doctrine of "reasonableness" to the Greeks and Aristotle. This truth under his guardianship must be given a hearing. That it came through the Roman Law has been conceded, but it has not been the custom to trace it back to its true origin. From the law of reason or of nature, Equity, the Law Merchant, the Law of Nations, and Private International Law are traced. This paper closes the most interesting series which Sir Frederick Pollock has been contributing to the *Columbia Law Review.*

Rescission for Breach of Warranty. Samuel Williston. Mr. Williston is not satisfied to remain silent under the criticism of Mr. Burdick upon his article of last year. The theory under discussion is that of the Massachusetts court, which allows rescission of an executed sale as a remedy for breach of warranty. Mr. Williston holds that nearly as many courts have "followed the Massachusetts rule as have followed the English law." Those who are deeply interested in this discussion will find much of value comes from the thorough sifting of the law bound to be made when two such opponents contend.

HARVARD LAW REVIEW.—March.

The Limitation of the Right of Appeal in Criminal Cases. Nathan A. Smyth. The great difference in the English and American systems in this respect, and the delays in securing speedy justice which our custom of appeals allows, has given rise to the query if our liberal right of appeal should not be abridged. There are many reasons given for continuing our present custom, but one which is not often presented is, probably, the most potent. A step towards greater harshness in the law has been hitherto, and seems now to be, a step backward. We have preceded England in many reforms, shall we now turn backward to join her? Our author has not been content to state the theories on either side; he has given us a study of conditions in New York county, where he has had the opportunity to make an exhaustive study. He gives us the number who have profited by this right of appeal in that county in the last five years, and finds that it is only nine men in one thousand who have had their cases passed upon by a court of appeal, and in only two and one-half cases in one thousand has the judgment been reversed. The reason given, however, for the few appeals is the lack of money; the very poor cannot appeal, for they have not the means. This gives the advantage to the well-to-do. This, however, does not seem to be an argument against the right of appeal, but against the present machinery for carrying out that right.

Mr. Smyth claims that the delay so often complained of exists chiefly in the public mind, arising from the delays secured in some very well-known cases. While allowing that there are evils in the system, after an examination of the cases which have been reversed on appeal Mr. Smyth believes that justice is advanced by allowing the right of appeal. He suggests that this right be limited to cases where:

1. It is claimed that the evidence submitted by the prosecution does not establish the crime *prima facie.*
2. It is claimed that material evidence offered by the defendant has been improperly excluded.
3. The trial judge reserves some question of law which he considers doubtful and of importance.

LAW MAGAZINE AND REVIEW.—March.

Legal Education in Germany. Gustave Schirrmeister. The present state of legal education in England, and its evident inadequacy to the demands of the day, has led Mr. Schirrmeister to examine the system

of legal education in Germany. He gives an outline of the course a German student is expected to follow in the three years that are required before the first of the Bar examinations can be taken. This course is so full that it practically requires four years to satisfactorily complete it, and all examinations are taken at the completion of the entire course. It is shown that this is a plan which works injustice to the painstaking student, giving to the man who can secure a "coach" at the end of the year an unfair advantage. The course itself is criticised for this reason and for the further fact that a course in comparative law is not compulsory, thus leaving the graduate totally ignorant of the common law in most instances.

Trade Regulations in the Middle Ages. Percy Houghton Brown, M.A., LL.D. In these days when the subject of combinations in restraint of trade is so much discussed, it has seemed strange that so little attention has been given to the early statutes and customs on this subject. In this paper attention is nearly all concentrated upon the statutes, which are of much interest, although all the statutes upon the subject were repealed as early as 1844, and offences of the sort as punished under the common law were also abolished. A number of treatises were written upon the subjects of forestalling, regrating, and engrossing, and parts of these make quite interesting reading in these modern days when the thing, if not the terminology, has survived. No inquiry seems to have been made as to whether the common law in regard to these matters is still in force in this country.

MICHIGAN LAW REVIEW.—March.

Is the British Empire Constitutionally a Nation? Stephen P. Stanton. The federal constitution of the United States has often proven a puzzle to Englishmen; it now seems that they have a larger puzzle of their own, and one which there are fewer rules to help in solving. The first question is whether the British constitution, "that best known and least knowable of things," is also the constitution of the colonies, and, in spite of the fact that there are such things as colonial constitutions, the conclusion is in the affirmative. In the light of this conclusion it may not be comforting to the colonies to learn that the British constitution is a "paradox," although it is probable that most of the colonies have experienced the fact itself at some period or other of their existence. The review of the subject, however, brings out, or appears to do so, the fact that the mother country is weakened rather than strengthened by her colonies; that her burdens are greater than her rewards, and that, lacking imperial unity of action and imperial strength, the empire constitutionally is not a nation.

YALE LAW JOURNAL.—March.

Personal Liberty in France. H. Cleaveland Coxe. It is here claimed that the ideal of personal liberty proclaimed by the French in 1789 has not been realized; that the word liberty is carved over every church door and public building, yet personal liberty is in practice not adequately protected. To the fact the code is the outgrowth of the Roman law, and that French lawyers are educated on the lines of that law, Mr. Coxe attributes this state of affairs. Education, the suppression of tradition when it supplants law, the enacting of the Bill of Rights, and the Writ of Habeas Corpus are the remedies suggested. It is probable that the recent act of the republic in placing education in secular hands will do more than any of the things suggested to remove the dominance of tradition and infuse the spirit of liberty into the law of the land.